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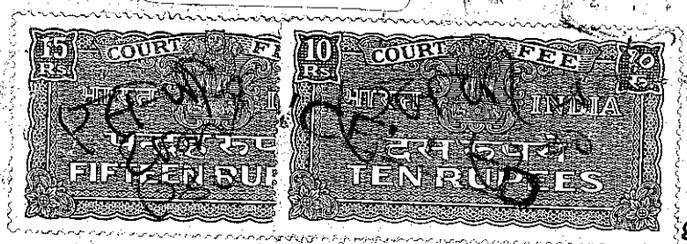

IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR (M.P.)
(District JAGDALPUR)

M.P. NO. 929 OF 1985.

Petitioner:- VASANT CHAUHAN S/O VITHAL RAO CHAUHAN, Ex-Senior Naib Nazir, Office of District and Sessions Judge, JAGDALPUR R/O Thakur Road, Ward No. 9, Jagdalpur, District BASTAR, (M.P.)

Versus

Respondents:- 1. The Registrar, High Court of Madhya Pradesh, Jabalpur (M.P.) AND

2. The District and Sessions Judge, JAGDALPUR, District BASTAR (M.P.)

3. Shri O.P. SHARMA, IInd Additional District Judge-cum-Enquiry Officer C/O Registrar, High Court of M.P. Jabalpur (M.P.)

PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA FOR ISSUING AN APPROPRIATE WRIT/ORDER OR DIRECTION

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HIGH COURT OF CHHATTISGARH, BILASPUR

M.P. No.729 of 1985

Vasant Chauhan

Vs.

The Registrar, High Court of Madhya Pradesh (now Chhattisgarh) and others

ORDER

Post for 1.9.2005

Sd/-
Sunil Kumar Sinha
Judge
30.8.2005

noted
Amit Verma
1-9-05

Dasti received
1.9.05
P. Bharti
Advt.

(132)

HIGH COURT OF CHHATTISGARH, BILASPUR

M.P. No.729 of 1985

Vasant Chauhan

Vs.

The Registrar, High Court of Madhya Pradesh
(now Chhattisgarh) and others

Shri Prafull Bharat, counsel for the petitioner.

Shri Manindra Shrivastava, Sr. Advocate with Shri Afroz Khan, for the respondents.

ORDER

(1.9.2005)

Sunil Kumar Sinha, J

(1) The petitioner, who was working as Senior Naib Nazir and was dismissed from service on account of a departmental enquiry conducted against him, has challenged the validity of his dismissal order dated 24.9.1982 (Annexure P-1) and the appellate order dated 01.11.1985 (Annexure P-21).

(2) The facts stated, are that the petitioner was working as the Naib Nazir in District and sesseions Court, Jagdalpur from 10.6.1980. On 31.3.1981, the District and Sessions Judge held inspection in Malkhana (Store room) in respect of property of Criminal Case No.239/1980 (*State of M.P. -Vs- Patro*) which was decided by the J.M.F.C., Sukma, Camp at Jagdalpur on 09.3.1981. This case was under section 34 of the Excise Act and the

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concerned property of this case was liquor which was to be destroyed as per the order dated 09.3.1981. On inspection, it was found that the property of this case (liquor) was not found in accordance with the specification mentioned in property registered as Property No.2285. An explanation was called from the petitioner, who sought time which was granted upto 04.04.1981 for production of the said property. On 06.4.1981 some property was produced by the petitioner which was again inspected by the concerned authority on 08.4.1981 and on such inspection it was found that the property (liquor) which was produced by the petitioner was not of the make of that Company, which was earlier deposited in *Malkhana*. It was found that 66 bottles of Capital Blazer Malted Whisky which were never deposited were produced and one bottle of whisky was found in excess and two bottles of Beer were found in short. Thus 66 bottles of Blazer Malted Whisky which were never deposited were found lateron on 08.4.1981 in the second inspection. On these facts, the petitioner was served with a charge sheet dated 22.5.1981 containing the following charges.

(i) That he was Naib Nazir Malkhana from 10.6.1980 to 08.4.1981;

(ii) That as Senior Naib Nazir, it was his duty to properly keep the case property of the cases deposited in Malkhana;

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(iii) That in Criminal Case No.239/1980 two bottles of Beer & 65 quarter bottles of whisky were found short and he defalcated it;

(iv) That 66 bottles of whisky of different make and quality were found & the same were never deposited and thus he exchanged that from the case property; and

(v) That the aforesaid act of the petitioner amounts to gross negligence and misconduct under the M.P. Civil Services (Classification, Control and Appeal) Rules 1966.

(quoted from original version)

(3) The petitioner filed his reply to the aforesaid charge sheet and thereafter a departmental enquiry was conducted by the enquiring officer and an enquiry report dated 19.5.1982 was submitted holding the charges, leveled against the petitioner, to be proved. The disciplinary authority concurred with the findings recorded by the enquiring officer and issued a notice of proposed punishment to the petitioner on 14.7.1982. Reply to this notice was filed by the petitioner on 5.8.1982 and thereafter, after considering the reply, the impugned punishment order dated 24.9.1982 was passed by the disciplinary authority which was challenged by the petitioner in appeal and ultimately an appellate order dismissing the appeal was passed by the appellate authority on 1.11.1985. It is against these orders, the petitioner has filed this writ petition.

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(4) At the arguments, learned counsel for the petitioner raised the following grounds:

(1) The finding recorded by the enquiring officer holding the petitioner guilty of the main charges were perverse ;

(2) Shri V.D. Vajpai, the then District and Sessions Judge was not cited as a witness in the charge sheet and he was examined by the enquiring officer thereby violating the rules;

(3) The documents demanded by the petitioner for defending his case were not supplied to him which violates the principles of natural justice and the entire enquiry vitiates on these counts.

(4) That the appeal of the petitioner was superficially dismissed by the appellate authority and the appellate authority did not apply his mind before passing of the appellate order.

(5) On the other hand learned counsel for the respondents submits that due and proper opportunity of hearing was awarded to the petitioner and the enquiry was conducted in reasonably fair manner. There was no violation of principles of natural justice as the documents demanded by the petitioner were not relevant documents for the lawful disposal of the proceedings of

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the enquiry. No rules were violated by calling Shri V.D. Vajpai as a witness in this enquiry as the rules do permit for the same. The appeal of the petitioner was also duly considered by the appellate authority and it was found to be without any merit and the same was dismissed in accordance with law.

(6) I have heard the learned counsel for the parties at length and have also perused the records of the writ petition.

(7) Firstly, I will take up the ground regarding perversity in the findings of the enquiring officer. Referring to the decision rendered in the matter of ***Kumaon Mandal Vikas Nigam Ltd., -Vs- Girja Shankar Pant and others (2001) 1 SCC Pg.182,*** learned counsel for the petitioner submitted that while in a departmental proceedings, the disciplinary authority is the sole judge of facts and the High Court may not interfere with the factual findings but the availability of judicial review even in the case of departmental proceedings cannot be doubted. He further submitted that an effected person can come to the court and show that the findings recorded in the disciplinary proceedings are based on no evidence or the findings are totally perverse. He also referred to the decision of ***Sher Bahdur -Vs- Union of India and others (2002) 7 SCC 142*** and submitted that the sufficiency of evidence must be taken as some evidence and it must link the charged officer with the misconduct alleged against him.

(8) There is no doubt in the mind of this Court regarding these principles. It has been held by the Apex Court in the case of *Kumaon Mandal Vikas Nigam Ltd (supra)* that the judicial

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review of the administrative action is feasible and the same has its application to its fullest extent in even departmental proceedings where it is found that the recorded findings are based on no evidence or the findings are totally perverse or legally untenable. It has further been held that the judicial review of the adequacy or inadequacy of evidence is not permitted but in the event of there being a finding which otherwise shocks the judicial conscience of the court, the judicial review is always permissible at the instance of an effected person. The expression "sufficiency of evidence" as has been held in the matter of *Sher Bahadur (Supra)* would indicate about the existence of some evidence which links the charged officer with the misconduct. It has been held that the evidence which is neither relevant in a broad sense nor establishes any nexus between the alleged misconduct and the charged officer, is no evidence in law. The mere fact that the enquiry officer has noted in his report in a broader sense "in view of oral, documentary and circumstantial evidence as adduced in the enquiry" would not in principle satisfy the rule of sufficiency of evidence.

(9) If we examine the present case, in light of the above broad principles, it would appear that many witnesses including the District and Sessions Judge were examined by the department. The Sessions Judge was examined as P.W.6. His statement has been filed as Annexure R-4. He has deposed about the inspections conducted by him and has also proved the documents relating to the case. In his statement, para7, he has deposed about the change of bottles of whisky with all its

details and thereafter he has been cross examined by the petitioner. The statement of this witness alongwith the documents exhibited by him clearly goes to show that there was evidence on record to link the charged officer with the misconduct alleged against him and this case cannot be classified as a case of no evidence on record or a case in which the evidence so collected is neither relevant in the broad sense nor establishes any nexus between the alleged misconduct and the charged officer. The finding does not appear to be perverse or based upon no evidence on record and a judicial review about such a finding which is based on positive evidence on record would not be possible as it is settled principles of law that the jurisdiction of the tribunal or the High Court to interfere with the disciplinary matters or punishment cannot be equated with the appellate jurisdiction. The tribunal or the High Court cannot interfere with the findings of the enquiry officer or competent authority where they are not arbitrary or utterly perverse. (Please see ***Union of India -vs- Parmananda - AIR 1989 S.C. 1185***) I am not inclined to accept the first argument advanced by learned counsel for the petitioner and the same is rejected.

(10) About the second point, learned counsel for the petitioner submitted that Shri V.D.Vajpai, the then District and Sessions Judge was not cited as a witness in the charge sheet and he was examined by the enquiring officer whereby the rules in relation to enquiry have been violated. I am not inclined to admit this argument advanced by learned counsel for the petitioner. It is true that Shri Vajpai was not cited as a witness in the charge

sheet but the order sheet of the enquiry dated 10.11.1981, filed as Annexure R-2,would show that after closing of the evidence by the presenting officer, the enquiring officer suo motu took a reasoned decision that in the facts and circumstances of this case, Shri V.D. Vajpai, the then District and Sessions Judge was an important witness who was required to be examined in this case, and in this manner, he was directed to be requested to give his evidence. Admittedly, the impugned enquiry was governed by the provisions of the M.P. Civil Services (Classification, Control and Appeal) Rules 1966. Rule 15 of the aforesaid Rules provides that if it shall appear necessary before the close of the case on behalf of the disciplinary authority, the enquiring authority may, in its discretion, allow the presenting officer to produce the evidence not included in the list given to the Government Servant or may itself call for the new evidence or recall and re-examine any witness and in such a case the Government Servant shall be entitled to have if he demands it, a copy of the list of further evidence proposed to be produced and an adjournment of the inquiry for three clear days before the production of such new evidence, exclusive of the day of adjournment and the day to which the enquiry is adjourned. It has further been provided that the enquiring officer shall give the Government servant an opportunity of inspecting such documents before they are taken on the record. The enquiring authority may also allow the Government Servant to produce new evidence, if it is of the opinion that the production of such evidence is necessary in the interest of justice. These provisions clearly indicate that the enquiring officer was well within his jurisdiction to call any

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witness not included in the list which according to him was an important witness for the purpose of this enquiry with certain restrictions which have been provided in the later part of this rule, like impediment of adjournment and supply of documents etc., In the present case, the enquiring officer had taken a decision to call Shri Vajpai on 10.11.1981 and he has fixed the case for 14.12.1981. In the facts and circumstances of the case, it cannot be said that the enquiring officer acted in violation of any rule and the enquiry vitiates on this count.

(11) Now coming to the ground raised by learned counsel for the appellant, regarding non-supply of the important documents to him, first of all, his application in this regard is to be seen. Learned counsel submitted that an application dated 15.1.1982 was filed by him making demand of certain documents but the same were not supplied to him. A copy of this application has been filed as Annexure P-13. It has been mentioned in this application that the documents contained in serial no.1 to 11 were required by the petitioner before the proposed examination of Shri V.D. Vajpai, but it has not been mentioned therein as to how these documents are "relevant" and "material" documents for cross examining this witness. Regarding non-supply of the documents, while dealing with the matter of ***Chandrama Tewari -Vs- Union of India, AIR 1988 S.C. 117***, the Apex Court held that "It is difficult to comprehend exhaustively the facts and circumstances which may lead to violation of principles of natural justice or denial of reasonable opportunity of defence. This question must be determined on the facts and circumstances of each case. While considering this question it has to be borne in mind that a delinquent officer is

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entitled to have copies of material and relevant documents only which may include the copy of statement of witnesses recorded during the investigation or preliminary enquiry or the copy of any other document which may have been relied in support of the charges. If a document has no bearing on the charges or if it is not relied by the enquiry officer to support the charges, or if such document or material was not necessary for the cross examination of witnesses during the enquiry, the officer cannot insist upon the supply of copies of such documents, as the absence of copy of such document will not prejudice the delinquent officer."

Non supply of the copies of documents which are not relevant and which have no bearing on charges or which are not relied upon by the enquiry officer to support the charges does not amount to violation of principles of natural justice.

(12) If, on these principles, we examine the case of the petitioner regarding non-supply of the demanded documents it would appear that none of these documents were the part of the charge sheet nor they are mentioned as the documents to be relied upon by the department to establish the charges leveled against the petitioner. The petitioner has also not shown as to how these documents are material and relevant. Even if the counsel for the petitioner, could not point out during the course of the arguments before this court that how the non-supply of these documents had prejudiced the case of the petitioner and the documents were, in fact, material and relevant documents, either for the purpose of defending the case of the petitioner or for the purpose of cross examination of the District and Sessions Judge who was examined as P.W.6 in this matter. On the basis of the authority referred to above, it would be clear that the application to supply the copies of documents is confined only to

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"material" and "relevant" documents and the enquiry would be vitiated only if the non supply of material and relevant documents, when demanded may have caused prejudiced to the employee. It is important to mention this fact that though the petitioner has mentioned in his application dated 15.1.1982 that these documents are required by him as the case is fixed for examination of Shri V.D. Vajpai on 22.1.1982 but neither during the examination nor during the cross examination of Shri V.D. Vajpai on 04.5.1982 the petitioner had raised this objection and he had cross examined him at length. Therefore, it would appear on record that no grievance was made by the petitioner on the score of non-production/supply of any such documents and he participated in the proceedings in a normal manner and the enquiry cannot be said to be vitiated by non-supply of such documents. I am not inclined to accept this argument advanced by learned counsel for the petitioner that the enquiry vitiates on this ground as it violates the principles of natural justice because the documents demanded were not supplied to him.

(13) Now coming to the last point raised by learned counsel for the petitioner about the dismissal of appeal by the appellate authority, the copy of complete file of M.P.High Court bearing No.III-18-275/82 containing the note sheets and orders, which has been shown to me by the counsel for the respondents, would show that after receiving the appeal in the Registry of the then M.P. High Court, a comment was called from District and Sessions Judge, Bastar and after considering each and every point raised by the appellant, the complete appellate file of the appellant was prepared by the Dy. Registrar on 28.5.1985 and placed before the O.S.D on 28.6.1985. The O.S.D.on 28.6.1985 passed necessary orders and the same was submitted before the Registrar on 25.10.1985 and the Registrar after

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considering all the points raised by the petitioner held that the appeal filed by the petitioner was devoid of any substance and he finally proposed for rejection of the appeal and the said proposal so prepared by the Registrar on 25.10.1985 was duly approved and the appeal filed by the petitioner was dismissed. After going through the entire records of the appeal file referred to above which was shown to me, I am satisfied that the appeal was dismissed after proper consideration being devoid of merits. Therefore, this argument advanced by learned counsel for the petitioner cannot be accepted.

(14) In the facts and circumstances of this case, I do not find any merit in the writ petition filed by the petitioner and the same is dismissed without any orders as to the costs.

Sd/-
Sunil Kumar Sinha
Judge
1.9.2005

/Rao/